IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1983 OF 2006
WITH
NOTICE OF MOTION NO. 2895 OF 2006
WITH
NOTICE OF MOTION NO. 3217 OF 2006
IN
APPEAL NO. 454 OF 2006
IN
COMPANY PETITION NO. 262 OF 2005

1. Seth Industries Ltd. & 3 ors.] .. Appellants (Ori.R.1 to 4)

Versus

1. Bela w/o Vikram Sehgal & 3 ors.] .. Respondents (Ori.Petnr. & 3 & 4 Intervenor)

Mr. C.U. Singh, senior counsel with Ms. Armin Wandrewala i/b Madhukar Haramwar for the appellants.

Mr. Y.V. Sanglikar with Mr. A.C. Shah for the respondents No.1 and 2.

Mr. Iqbal Chagla, senior counsel with Mr. Cyrus Ardeshir i/b M/s. Kanga & Co. for respondent No.3.

Ms. Gayatri Singh for respondent No.4.

ALONGWITH

NOTICE OF MOTION NO. 2276 OF 2006
IN
APPEAL NO. 512 OF 2006
IN
COMPANY PETITION NO. 262 OF 2005

1. Cowtown Land Development Pvt. Ltd.] .. Appellants (Ori.Intervenors)

Versus

1. Bela w/o Vikram Sehgal & 3 ors.] .. Respondents

Mr. I.M. Chagla, senior counsel with Mr. Cyrus Ardeshir i/b M/s. Kanga & Co. for the appellants.

Mr. Y.V. Sanglikar with A.C. Shah i/b S.G. Vakil for respondents No. 1 and 2.

Mr. C.U. Singh, senior counsel with Ms. Armin Wandrewala i/b Madhukar Haramwar for the respondents No.3, 4 5 & 6.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 19TH SEPTEMBER, 2006

P.C. :

. By this common order, we shall dispose of the aforesaid four Notices of Motion taken out in two Appeals being Appeal Nos.454 of 2006 and 512 of 2006. Both these Appeals arise out of the Company Petition No.262 of 2005.

2. Appeal No.454 of 2006 is at the instance of the company aggrieved by the order dated 28th April, 2006 passed by the Company Judge admitting the Company Petition and directing the office to take further proceedings in accordance with Companies Act and the Company Rules, 1959 and the said Appeal has already been admitted. Appeal No.512 of 2006 is at the instance of Cowtown Land Development Private Limited which has been permitted to intervene in the Company Petition and which is said to have purchased the assets of the company.

3. Seth Industries Limited (the company) was before the B.I.F.R. at the relevant time being sick industrial undertaking. The B.I.F.R. forwarded its opinion to this Court recommending that the company be wound up. The said order came to be upheld by A.A.I.F.R. The company preferred Writ Petition against the aforesaid orders before the Delhi High Court. The said Petition was admitted by Delhi High Court on 5th October, 1993 and the Delhi High Court passed an interim order *inter alia* staying the operation of the order passed by the B.I.F.R. and proceedings of winding up for which recommendation was made by the B.I.F.R. We are informed that the said Writ Petition came to be dismissed in default, but was later restored. The fact that the Writ Petition challenging the order of B.I.F.R. and A.A.I.F.R. is pending before the Delhi High Court is not in dispute.

4. We have no hesitation in observing that upon restoration of the Writ Petition, the interim order passed by the Delhi High Court before the dismissal of the Writ Petition in default, stood revived along with the Writ Petition when the order of dismissing the Writ Petition in default was set aside. This legal position is clearly laid down by the Supreme Court in the case of **Vareed Jacob Vs. Sosamma Geevarghese (2004) 6 S.C.C.**

378. In this view of the matter, we find that the company has been able to make out strong case for staying the operation of the order of the learned Company Judge dated 28th April, 2006.

5. We, accordingly, order that the order dated 29th April, 2006 passed by the company Judge shall remain stayed until the disposal of aforesaid Appeal No.454 of 2006.

6. Our attention was invited to the settlement said to have been entered into before the Deputy Commissioner of Labour, Thane with regard to the legal dues of 1200 workers who were working with the company at the time it stopped operation in the year 1986. As per the said settlement, the sum of Rs.9,27,96,994/- is payable by the company towards the legal dues of the workers. This figure is disputed by Ms. Gayatri Singh. She submits that legal dues of the workers exceed Rs.60 crores. We do not intend to go into this controversy. As of now, we accept the figure arrived at in the settlement before the Labour Commissioner. If there is any dispute about the exact amount of legal dues of the workers, the workers have to take up the matter before the competent forum.

7. Mr. C.U. Singh, the senior counsel for the company submitted that out of Rs.9,27,96,994/-, the sum of Rs.86,14,335/- has been paid to some of the workers. Mr. Iqbal Chagla, the senior counsel for the appellant in Appeal No.512 of 2006 - Cowtown Development Private Limited (the builder) submits that as per the agreement between them and the company, the builder shall deposit the remaining amount of Rs.8,41,82,659/- before this Court within one month from today. We accept the statement of Mr. Iqbal Chagla.

8. With regard to the Notice of Motion No.2895 of 2006, Mr. V.Y. Sanglikar, the counsel for respondent No.2 in Appeal No.454 of 2006 invited our attention to the judgment of the Supreme Court in the case of **NGEF Ltd. Vs. Chandra Developers (P) Ltd. & Anr., (2005) 8 SCC 219** and submitted that in view of this decision, the company Court has no jurisdiction in the matter and the B.I.F.R. alone has jurisdiction in the matter of sale of assets of the company until an order of winding up is passed by the company Court. We do not intend to consider this aspect at length, as it is not necessary, but suffice it to say that if that be so, the respondent No.2 ought to approach the B.I.F.R. for appropriate reliefs.

9. We, accordingly, dispose of these four Notices of Motion by the following order:

(i) The order dated 28th April, 2006 and further proceedings in Company Petition No. 262 of 2005 shall remain stayed until the disposal of the Appeal No.454 of 2006.

(ii) The respondent No.3 in Appeal No.454 of 2006 and appellants in Appeal No.512 of 2006 shall deposit a sum of Rs.8,41,82,659/- with the Prothonotary & Senior Master of this Court within one month from today.

(iii) The appropriate order regarding the disbursement of the legal dues of the workers as per the settlement entered into before the Labour Commissioner on 19th July, 2006 shall be passed by the Court after the deposit of the said amount.

(iv) Ad-interim order granted in Company Application No.322 of 2005, however, shall continue until further orders despite that the operation of the order dated 28th April, 2006 has been stayed.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]